

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

MARK LYLE BELL

v.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 5:22-CV-00025-RWS

ORDER

Before the Court is the Report and Recommendation of the United States Magistrate Judge (Docket No. 8), which contains her findings, conclusions and recommendations for the disposition of this matter. Petitioner Mark L. Bell, a prisoner confined at the Telford Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-captioned civil action to petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket No. 1. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636 and the applicable orders of this Court. After review of the petition and evidence, the Magistrate Judge issued a Report recommending the petition (Docket No. 1) be denied. Docket No. 8. The Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court.

A copy of the Report and Recommendation was mailed to the Petitioner. Petitioner acknowledged receipt of the Report and Recommendation on February 16, 2022. Petitioner was granted an extension of time, through April 18, 2022, to file objections to the Report and Recommendation. To date, no objections have been filed.

Petitioner is, therefore, barred from *de novo* review by the District Court of the Magistrate Judge's findings, conclusions and recommendations; and, except upon grounds of plain error, Petitioner is barred from appellate review of the unobjected-to factual findings and legal

conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this cause of action and the Report of the Magistrate Judge. Upon such review, the Court concludes that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"), *cert. denied*, 492 U.S. 918 (1989). There being no grounds of plain error or manifest injustice, the Court hereby adopts the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court.

Additionally, the Petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982).

To make a substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate (1) that the issues are subject to debate among jurists of reason, (2) that a court could resolve the issues in a different manner or (3) that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84; *see also Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right and (2) whether the

district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).

Here, the Petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason or that a procedural ruling was incorrect. In addition, the questions presented are not worthy of encouragement to proceed further. The Petitioner has, therefore, failed to make a sufficient showing to merit the issuance of a certificate of appealability. Thus, a certificate of appealability will not be issued. Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 8) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Petitioner's Petition for Writ of Habeas Corpus (Docket No. 1) is **DENIED**. It is further

ORDERED that Petitioner's above-titled cause of action is **DISMISSED WITHOUT PREJUDICE**. It is further

ORDERED that any and all motions currently pending in this civil action are hereby **DENIED-AS-MOOT**.

So ORDERED and SIGNED this 23rd day of May, 2022.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE